

Message Text

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ACTION OES-07

INFO OCT-01 EUR-12 ISO-00 ACDA-10 CIAE-00 INR-07 IO-14
L-03 NSAE-00 NSC-05 EB-08 NRC-07 FEAE-00 DODE-00
SS-15 SP-02 PM-05 /096 W
-----047332 021855Z /47

R 021704Z AUG 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC 0272
INFO AMEMBASSY BRUSSELS
AMEMBASSY LONDON
AMEMBASSY PARIS
AMEMBASSY VIENNA
ERDA WASHDC
ERDA GERMANTOWN

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DEPT PASS NRC

USEEC, USOECD, USIAEA

E.O. 11652: N/A
TAGS: ENRG, TECH, GW
SUBJECT: COURT OPINION ON GERMAN FAST BREEDER PROGRAM

REF: (A) BONN 6408, (B) BONN 10760, (C) BONN 9058

1. SUMMARY. ON JULY 25 A SERIOUS NEW THREAT EMERGED TO GERMANY'S FAST BREEDER PROGRAM. THE SENATE OF AN ADMINISTRATIVE COURT OF APPEALS, CURRENTLY CONSIDERING AN OBJECTION TO THE CONSTRUCTION OF GERMANY'S FIRST FAST BREEDER REACTOR, SNR-300, QUESTIONED THE CONSTITUTIONALITY OF THE ATOMIC LAW. THIS LAW CURRENTLY MAKES APPROVAL OF FAST BREEDER LICENSES THE RESPONSIBILITY OF THE EXECUTIVE RATHER THAN THE PARLIAMENTS. END SUMMARY.

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2. IN A LETTER SENT TO THE PARTICIPANTS PRIOR TO THE COURT DECISION, THE COURT ASKS IF, BECAUSE OF THE FAR REACHING CONSEQUENCES OF THIS NEW REACTOR TYPE, THE LEGISLATIVE BODIES (I.E. THE PARLIAMENTS) SHOULD NOT ISSUE CONSTRUCTION LICENSES INSTEAD OF THE EXECUTIVE BRANCH. IT CALLS FOR AN EXAMINATION BY THE FEDERAL

CONSTITUTIONAL COURT TO DETERMINE WHETHER
FUNDAMENTAL DEMOCRATIC PRINCIPLES AND THE SEPARATION
OF POWERS ARE ENDANGERED BY THE PREVAILING PROCEDURE.
THE JUDGES ARGUE THAT THE ATOMIC LAW GIVES THE
EXECUTIVE BRANCH A DEGREE OF INFLUENCE OVER NUCLEAR
POLICY THAT MIGHT CONFLICT WITH THE CONSTITUTION, WHICH
MAKES FUNDAMENTAL POLITICAL DECISIONS THE RESPONSIBILITY
OF THE PARLIAMENT. THEY NOTED THAT FEDERAL AND STATE
GOVERNMENTS COULD DECIDE NOT ONLY ON THE NUMBER OF
NUCLEAR POWER PLANTS TO BE BUILT BUT ON THE TECHNOLOGY
TO BE APPLIED AS WELL. ESPECIALLY IN THE FIELD OF FAST
BREEDER TECHNOLOGY THE POLITICAL, SOCIETAL AND
ECOLOGICAL IMPACTS WERE TREMENDOUS. THE COURT THEN
LISTED THE NUMEROUS PROBLEMS ASSOCIATED WITH FAST
BREEDER TECHNOLOGY: THE UNRESOLVED PROBLEM OF THE
LONG TERM DISPOSAL OF NUCLEAR WASTE, THE MILITARY
VULNERABILITY OF A NATION WITH A LARGE NUMBER OF SUCH
FACILITIES, THE RISKS OF A PLUTONIUM ECONOMY, THE
CONCERN ABOUT THE POSSIBLE EXPORT OF SUCH SENSITIVE
TECHNOLOGY, AND THE EFFECT ON NATIONAL ECONOMIC
DEVELOPMENT WHEN AN INCREASING SHARE OF THE NATIONAL
INVESTMENT VOLUME GOES TO NUCLEAR ENERGY PRODUCTION.

3. THE COURT HAS NOT DECIDED YET IF IT WILL TAKE THIS
ISSUE TO THE CONSTITUTIONAL COURT. IT IS EXPECTED TO ANNOUNCE ITS
DECISION ON AUGUST 18, WHEN IT WILL ALSO MAKE PUBLIC
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ITS DECISION ON THE SNR-300 TRIAL. FEDERAL MINISTER
FOR RESEARCH AND TECHNOLOGY MATTHOEFER COMMENTED THAT,
EVEN IF THE QUESTION IS TAKEN TO THE CONSTITUTIONAL COURT,
CONSTRUCTION OF SNR-300 WOULD PROBABLY PROCEED AS
PLANNED. AN APPEAL BEFORE THE COURT, HE
EXPLAINED, WOULD IN EFFECT POSTPONE THE DECISION OF
THE LOWER COURT AND CONSTRUCTION OF THE SNR-300
COULD CONTINUE IN THE MEANTIME. MATTHOEFER ALSO URGED
THAT FUTURE DECISIONS ON REACTOR SITING SHOULD BE
INCORPORATED INTO REGIONAL PLANNING PROGRAMS BECAUSE
THESE WERE ESTABLISHED BY THE STATE PARLIAMENTS AND
WERE THEREFORE VIEWED AS MORE LEGITIMATE BY THE PUBLIC.

4. IN OTHER COMMENT TWO STATE MINISTERS OF NORTH
RHINE-WESTPHALIA URGED THAT POLITICAL ANSWERS HAD TO
BE FOUND TO THESE NEW QUESTIONS. IN CASE OF A NEGATIVE
DECISION BY THE SUPREME COURT, SERIOUS DELAYS IN THE
NUCLEAR LICENSING PROCEDURES WOULD OCCUR AND PRODUCE
UNFORESEEABLE CONSEQUENCES FOR THE ECONOMY AND THE JOB
MARKET. SUCH AN OUTCOME WOULD NATURALLY HAVE A DETRI-
MENTAL IMPACT ON THE UTILIZATION OF OTHER MORE CON-
VENTIONAL REACTOR TYPES SUCH AS THE LIGHT WATER

REACTOR.

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5. INDUSTRY WAS SOMEWHAT SURPRISED AT THIS UNEXPECTED BLOW. HOWEVER, IN AN UNOFFICIAL COMMENT A REPRESENTATIVE OF INTERATOM, THE COMPANY CONSTRUCTING SNR-300, HINTED THAT THE FAST BREEDER PROGRAM ALREADY HAD LEGISLATIVE APPROVAL AS ALL ALLOCATIONS HAD UNDERGONE PARLIAMENTARY INSPECTION BEFORE APPROVAL. HE ADDED THAT THE FAST BREEDER PROGRAM HAD ALREADY RECEIVED A TOTAL FUNDING OF OVER DM 2 BILLION.

6. EMBASSY COMMENT: THIS COURT ACTION LINES UP WITH OTHERS UNFAVORABLE TO THE FURTHER EXPANSION OF NUCLEAR ENERGY (REF A). ALL PUT THEIR RULINGS ON A DIFFERENT BASIS: ON THE UNRESOLVED QUESTION OF THE MANAGEMENT OF THE SPENT FUEL ELEMENTS (BROKDORF), ON THE NEARBY LOCATION OF A PHARMACEUTICAL FIRM (GROHNDE), ON THE FAILURE TO INCORPORATE A BURST PROOF CONTAINMENT INTO
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THE DESIGN (WYHL). TO THESE SAFETY AND ENVIRONMENTAL CONCERNS THE NEW OPINION NOW ADDS THE SOCIETAL AND POLITICAL IMPACT AS A NEW FACTOR. THIS DEVELOPMENT MAKES IT PROBABLE THAT GERMANY'S NUCLEAR PROGRAM WILL NOT PROCEED UNLESS A THOROUGH PUBLIC DISCUSSION HAS BEEN CONDUCTED AND A CONSENSUS HAS EVOLVED. THIS IS PARTICULARLY PROBABLE FOR THE FAST BREEDER PROGRAM AND THE ASSOCIATED NEED TO ESTABLISH A BIG REPROCESSING CAPACITY. IN ADDITION TO ALREADY HEAVY PUBLIC OPPOSITION THE FAST BREEDER PROGRAM HAS BEEN UNDER ATTACK FROM THE TWO GOVERNMENT COALITION PARTIES (REF B AND C).
STOESSEL

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CONSTITUTIONAL LAW, NUCLEAR REACTORS, LICENSES
Control Number: n/a
Copy: SINGLE
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Decaption Note:
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Disposition Approved on Date:
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Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
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Format: TEL
From: BONN
Handling Restrictions: n/a
Image Path:
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Office: ACTION OES
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 77 BONN 6408, 77 BONN 10760, 77 BONN 9058
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29-Oct-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1424274
Secure: OPEN
Status: NATIVE
Subject: COURT OPINION ON GERMAN FAST BREEDER PROGRAM
TAGS: ENRG, TECH, GE
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/43f29e4f-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009